

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

JEREMY EDWIN PORTER & RUTH ANN )  
PORTER, )  
 )  
Petitioners, )  
 )  
v. ) Docket No. 16966-14  
 )  
COMMISSIONER OF INTERNAL REVENUE, )  
 )  
Respondent. )

**ORDER**

This case for the redeterminations of deficiencies is before the Court on petitioners' Motion to Dismiss for Lack of Jurisdiction, filed May 15, 2015. According to petitioners' motion, the Court lacks jurisdiction in this case because the notice of deficiency that forms the basis for this case is invalid. Respondent's objection to petitioners' motion was filed on June 1, 2015, and petitioners' reply to respondent's objection was filed on June 3, 2015.

In a notice of deficiency dated May 13, 2014 (notice), respondent determined deficiencies in, and imposed section 6662(a)<sup>1</sup> penalties with respect to petitioners' 2011 and 2012 Federal income taxes. The petition, timely filed on July 21, 2014, in response to the notice, challenges the deficiencies as well as the penalties. Respondent's answer, filed August 19, 2014, concedes no error with respect to the determinations made in notice.

In their motion to dismiss petitioners assert that the notice is invalid for the following reasons: (1) application of the principle embodied in SEC v. Chenery, 332 U.S. 1946 (1947); (2) the notice mailed to petitioners does not match the notice contained in the administrative record; (3) the notice reflects an omission of required information; (4) the notice does not accurately calculate or reflect the true amount of tax and penalties because petitioners previously made a payment; (5) the

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<sup>1</sup>Section references are to the Internal Revenue Code of 1986, as amended. Rule references are to the Tax Court Rules of Practice and Procedure, available on the Internet at [www.ustaxcourt.gov](http://www.ustaxcourt.gov).

notice fails to satisfy requirements of the Administrative Procedures Act (APA); and (6) respondent failed to comply with Internal Revenue Service (IRS) policies contained in the Internal Revenue Manual (IRM). Petitioners also allege that the Tax Court has historically upheld notices that contain errors and may be disinclined to hold respondent to the same standard to which it holds taxpayers.

We'll start with some general principles regarding the Court's jurisdiction. As we have repeatedly noted, the Tax Court is a court of limited jurisdiction and may exercise that jurisdiction only to the extent authorized by Congress. Sec. 7442; Naftel v. Commissioner, 85 T.C. 527, 529 (1985). The Court has jurisdiction to redetermine a taxpayer's Federal tax liabilities in a deficiency proceeding where the Commissioner has issued a valid notice of deficiency and the taxpayer has timely filed a petition. Secs. 6212, 6213; Rule 13(a), (c). If no valid notice of deficiency was issued, then this Court is compelled to dismiss the case for lack of jurisdiction on that ground. Monge v. Commissioner, 93 T.C. 22, 27 (1989).

It is well settled that no particular form is required for a notice of deficiency to be valid. See Benzvi v. Commissioner, 787 F.2d 1541, 1542 (11th Cir. 1986); Jarvis v. Commissioner, 78 T.C. 646, 655 (1982). A notice of deficiency is valid if the Commissioner demonstrates that "the IRS has determined that a deficiency exists for a particular year and specify the amount of the deficiency." Stoecklin v. Commissioner, 865 F.2d 1221, 1224 (11th Cir. 1989) (quoting Benzvi v. Commissioner, 787 F.2d at 1542). The Court of Appeals for the Seventh Circuit, the court to which this case is appealable barring a stipulation to the contrary, further has held that "the Commissioner's notice of deficiency is not invalidated because it contains no particulars or explanations concerning how the alleged deficiencies were determined. Barnes v. Commissioner, 408 F.2d 65, 68 (7th Cir. 1969), aff'g T.C. Memo. 1967-250.

### Inapplicability of Chenery

Petitioners' reliance on Chenery is misplaced. According to that case, "a reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency." SEC v. Chenery Corp., 332 U.S. 194, 196 (1947).

While this Court has applied Chenery in reviewing notices of determination concerning collection action in collection proceedings brought under section 6330(d), see, e.g., Antioco v. Commissioner, T.C. Memo. 2013-35, at \*24; Salahuddin v. Commissioner, T.C. Memo. 2012-141, we have never applied Chenery in the context of a deficiency case. It is well established that deficiency cases are reviewed de novo, and, except in limited circumstances, the Court does not look behind the notice of deficiency. See Greenberg's Express, Inc. v. Commissioner, 62 T.C. 324 (1974). In a deficiency case, the Court's "determination as to a petitioner's tax liability must be based on the merits of the case and not any previous record developed at the administrative level." Id. at 328. Consequently, Chenery is inapplicable here.

#### Alleged Omissions in the Notice

Petitioners' second and third arguments relate to asserted omissions in the notice. Specifically, petitioners allege that the notice does not include pages that were later included in the copy of the notice contained in the administrative record, and that those missing pages provide an explanation for adjustments to income, pension and annuities. Respondent attached as Exhibit A to his objection a copy of the notice, which includes a page that explains the adjustment to pension and annuities income.

Although no particular form is required for a valid notice of deficiency and respondent need not explain how the deficiencies were determined, see Campbell v. Commissioner, 90 T.C. 110 (1988), a notice of deficiency must advise the taxpayer that respondent has determined a deficiency and must specify the year and amount, see Foster v. Commissioner, 80 T.C. 229-230 (1983). In this case the notice references both the years and the amount of the deficiency for each year. Even if the page explaining respondent's adjustments was not made part of the notice, as petitioners claim, the omission of this page does not invalidate the notice of deficiency. See King v. Commissioner, T.C. Memo. 1988-26 (citing Barnes v. Commissioner, 408 F.2d at 68, and noting that "[t]he notice need not contain any particulars or explanations as to how the deficiency was determined.").

#### Correctness of the Determination Made in the Notice

Petitioners' fourth argument is that the notice of deficiency is invalid because it does not account for a payment petitioners made toward their 2012 tax liability. Petitioners attached as Exhibit 4 to their motion to dismiss, a copy of a

check made out to the United States Treasury dated July 26, 2013, for \$1,855. The payment was designated for “2012 1040x.”

Full payment of a proposed deficiency before a notice of deficiency is issued can extinguish the deficiency and invalidate a notice of deficiency for such year. See Hillenbrand v. Commissioner, T.C. Memo. 2002-303, at \*4-6. The record reflects that petitioners made a partial payment toward their 2012 tax liability; petitioners did not pay the deficiency in full before the notice was issued. Therefore, petitioners’ partial payment of \$1,855 towards their 2012 tax liability does not invalidate the notice of deficiency for that year.

Furthermore, petitioners’ argument seems more directed towards the correctness of respondent’s determinations made in the notice, rather than the validity of the notice. This Court’s jurisdiction in a deficiency case does not hinge on the correctness (or incorrectness) of respondent’s determinations made in a notice of deficiency. It is not the existence of a deficiency but the Commissioner’s determination of a deficiency that provides a predicate for Tax Court jurisdiction. See Cross v. Commissioner, T.C. Memo. 2012-344, at \*6-7.

#### Failure of the Notice to Comply with Requirement of the APA

Petitioners’ fifth argument is that the notice is invalid because that notice fails to satisfy APA requirements. Petitioners cite Mayo Found. for Med. Educ. & Research v. United States, 562 U.S. 44 (2011), to support their contention that general principles of administrative law should apply to this deficiency case. The Mayo opinion, however, does not discuss whether the APA requires the Commissioner to include additional information in a notice of deficiency or whether the Commissioner’s failure to include such information constitutes grounds for invalidating a notice of deficiency. To the contrary, this Court has held that the APA does not modify provisions of the Internal Revenue Code. See, e.g., Porter v. Commissioner, 130 T.C. 115, 131 (2008) (“[T]he APA does not limit or repeal our de novo review procedures.”); Alfieri v. Commissioner, 60 T.C. 296, 299 (1973), aff’d, 487 F.2d 1393 (2d Cir. 1973). In this respect, the specific procedures that Congress has prescribed for this Court in the Internal Revenue Code may differ from the more general rules embodied in the APA.

Respondent's Failure to Comply with the IRM

Petitioners' final argument is that respondent failed to comply with various sections of the IRM. It is a well settled principle that "the Internal Revenue Manual does not have the force of law, is not binding on the IRS, and confers no rights on taxpayers." Thompson v. Commissioner, 140 T.C. 173, 190, n.16 (2013) (quoting McGaughy v. Commissioner, T.C. Memo. 2010-183, and further citing United States v. Caceres, 440 U.S. 741 (1979)). Consequently, a violation of the IRM, if in fact there was one in this case, would not invalidate the notice.

Considering the foregoing, it follows and is

ORDERED that petitioners' Motion to Dismiss for Lack of Jurisdiction, filed May 15, 2015, is denied.

**(Signed) Lewis R. Carluzzo**  
**Special Trial Judge**

Dated: Washington, D.C.  
June 29, 2015